# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1958

**No. 66**

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,
*Petitioners,*

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON,
*Respondents.*

## REPLY BRIEF FOR PETITIONERS.

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## REPLY BRIEF FOR PETITIONERS.

### I.

### PETITIONERS' BRIEF CONTAINS NO MISSTATEMENT OF FACT OR LAW.

At page 3 of their brief, respondents urge that petitioners have inserted "outright misstatements" of fact in two instances in their brief and then state that petitioners' brief contains "misstatements and distor-

tions of law." The latter assertion deserves no comment inasmuch as the citations of authority in petitioners' brief speak for themselves and respondents would better direct their attention to a discussion of those authorities than to engage in accusations.

It is alleged that petitioners have misstated the facts at page 5 of their brief and have stated that "respondents were engaged in interstate commerce". Clearly, respondents have not carefully read and considered petitioners' brief for no such statement can be found there but rather it is stated at page 5 of that brief, commencing with the first line "The trial court found that the company was engaged in a *business affecting* interstate commerce within the meaning of the Act. . ." (Emphasis added.) This statement, of course, is identical to the finding of the trial Court and consistent with the complaint filed by the respondents and their subsequent admissions throughout the proceedings in this matter.

Respondents then urge that petitioners are guilty of a misstatement of fact when they state that the complaint alleged and the trial Court found that the conduct of petitioners was in violation of the Labor-Management Relations Act. Without belaboring the point, the truth of this statement can be pointed out by respondents' own admission contained in a brief filed with this Court, wherein they state:

> "Any possible conflict with any rights created by the National Labor Relations Act is eliminated by the fact that the *conduct enjoined is*, according to the *holding of the court below* and the

contention of petitioners, *positively forbidden by the national law.*" (Brief For Respondents in Opposition, *San Diego Building Trades Council, et al v. J. S. Garmon, et al,* October Term, 1955, No. 785, at page 8. Emphasis added.)

Finally, respondents imply that petitioners' brief contains other "misstatements" which are at no time pointed out in other portions of their brief.

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## II.

### RESPONDENTS ATTEMPT TO RE-CHARACTERIZE THE NATURE OF THE DISPUTE AND THE THEORY OF THEIR ACTION IN THIS MATTER.

It is significant to note that respondents place major emphasis upon a re-characterization of the nature of the dispute involved in this case and at the same time re-characterize the theory upon which they originally filed a complaint in the trial Court.

Respondents urge, at this late state, that their action is based solely upon a so-called interference with the employers' business relationship, which they now allege is a tort under state law and further state that their complaint was not based upon any allegation that the Labor-Management Relations Act was violated. Not only is the former theory totally lacking from any of the pleading filed in this matter but is totally lacking in any discussion of any Court, including Courts where respondents were successful. Indeed, the very admissions and contentions of the respondents, as indicated in the record, demonstrate

that the sole theory upon which injunctive relief and incidental relief was sought was an alleged violation of the Act. (Printed Record, pages 1-5; for specific references see Paragraphs V, VI and VII of the Complaint, Printed Record, pages 2, 3.)

The finding of the trial Court expressly belies the belated attempt of respondents to re-characterize the case as one not involving federal law. The trial Court stated at page 16 of the printed record in Paragraphs I and II:

> "The business of the plaintiffs affects interstate commerce *and is subject to* the National Labor Relations Act." (Emphasis added.)
>
> "The picketing of the defendants is for an improper purpose to wit, to compel the plaintiffs to enter into a contract which will require it to commit an *unfair labor practice* by discriminating with respect to employment of new employees, and with respect to conditions of employment with existing employees by reason of union membership or lack thereof, although the defendants are not the collective bargaining representatives of the employees of plaintiffs within the meaning of the *National Labor Relations Act.*" (Emphasis added.)

Obviously, it cannot now be denied by a display of semantic prowess that federal law is directly involved; that the theory of the complaint was based only upon an alleged violation of federal law; that there was no allegation or finding of any violation of state law; that injunctive relief was sought to prevent alleged violation of federal law and that dam-

ages were sought and awarded incidentally to such injunctive relief.

The absurdity of respondents' current contention is highlighted by their statement that the finding that the Garmons' business affected interstate commerce within the meaning of the Act could be applied to "virtually every retail business". Clearly, no such finding would be relevant or necessary if federal law were not involved and if the cause of action alleged were based purely upon state law.

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## III.

### THE EXCLUSIVE JURISDICTION OF THE BOARD IS NOT LIMITED TO SO-CALLED PREVENTATIVE RELIEF.

Respondents continue to urge the artificial premise that there is a distinction between so-called "preventative" relief and damages. Clearly, such a distinction has never been stated or supported by any authority, either expressly or by implication. Respondents attempt to cite the decision of this Court in *United Construction Workers v. Laburnum*, 347 U.S. 656 in support of their contention and then attempt to expand that decision to include all so-called "tortious" conduct without regard to the peacefulness of the conduct and without regard to the nature of the dispute. This point has been argued at length in petitioners' brief and the point will not be labored at this time other than to state that the detailed and careful discussion of this Court in its decision in the *Laburnum* case and the discussion of the question

of violence in connection with the outlining of the instances in which state Courts could assert jurisdiction to award damages completely negates respondents' statement that the decision in that case "was not based on the particular type of tortious conduct presented". (Respondents' Brief, page 5.)

Respondents' contention that the decisions of this Court in *International Union v. Russell,* 356 U.S. 634, and *International Association of Machinists v. Gonzales,* 356 U.S. 617, permit state Courts to grant damages in cases such as the one involved here, is equally erroneous. The *Russell* case, as did *Laburnum,* contained a clear element of violence and involved a question of damages for injury to a private person under traditional tort principles, rather than damages sought by an employer against a union because of direct labor-management relationships. The *Gonzales* case, similarly, is not connected in any way with direct labor-management relations but involves the relationship between a member and his union as to an aspect which is completely outside of the scope of the regulation afforded by the Act, namely, his rights under the union constitution, which is a contract between him and it.

In this connection, much is made of the fact that state Courts might grant damages for breach of contract but this does not support the contention that state Courts can therefore, assert jurisdiction to prevent or punish peaceful picketing and other concerted activities which are not a breach of a collective bargaining agreement.

## IV.

### THE LABOR-MANAGEMENT RELATIONS ACT IS NEITHER A SHIELD AGAINST WRONGFUL CONDUCT NOR A CLOAK OF IMMUNIZATION AGAINST SUCH CONDUCT.

Respondents make an appeal which would be better directed to the legislature rather than this Court when they say that if the contentions of the petitioners were upheld, that those persons and organizations guilty of wrongful or tortious conduct would be immunized from action or would be shielded by the Act. This, of course, needs no answer here other than the statement that so-called tortious conduct as well as other wrongful conduct is still, as always, subject to state law but certainly, when activity directly concerned with labor-management relations is sought to be twisted or characterized as merely constituting another such tort, then both the meaning of the Act and the traditional concepts of state jurisdiction are violated. This is precisely the significance of the language of this Court in *Laburnum* when it enunciated the standard of "traditional tort".

## V.

### THE CALIFORNIA SUPREME COURT VIOLATED THE MANDATE OF THIS COURT.

Again, no lengthy discussion is necessary to answer the arguments of respondents with respect to the mandate of this Court. Clearly, there was no question of misinterpretation of that mandate which was clear, concise and to the point and there need be no

further discussion other than to indicate that the law with respect to labor-management relations was radically altered for the first time by the majority of the California Supreme Court in its second decision in this matter, as was the basis for its sustaining of the award of damages by the trial Court. This fact is not nullified by respondents' self-righteous language.

Dated, January 12, 1959.

Respectfully submitted,

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